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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVE MORGAN, on behalf of
himself and all others similarly
situated,

Plaintiff-Appellant,

v.

COUNTY OF YOLO, a political
subdivision of the State of
California; E. G. PRIETO,
individually and in his official
capacity as Sheriff for the County of
Yolo,

Defendants-Appellees.

) No. 04-15407

) D.C. No. CV-03-02228-MCE/JFM

) **MEMORANDUM***

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Submitted October 20, 2005**
San Francisco, California

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

Before: KOZINSKI and FERNANDEZ, Circuit Judges, and HATTER,^{***}
District Judge.

Dave Morgan appeals the district court's order, which stayed this action against the County of Yolo and Sheriff E.G. Prieto pending final determination of a case brought by the County of Yolo against Morgan in the California Superior Court for the County of Yolo, No. G03-1620. We dismiss this appeal as moot and remand for further proceedings.

After this appeal was filed, the Superior Court case was dismissed without prejudice at the behest of the County. The stay order has terminated by its own terms and we cannot give any meaningful relief to Morgan. See Lasar v. Ford Motor Co., 399 F.3d 1101, 1108 (9th Cir. 2005); Foster v. Carson, 347 F.3d 742, 745–46 (9th Cir. 2003); Ruvalcaba v. City of L.A., 167 F.3d 514, 520–21 (9th Cir. 1999). Thus, the claim made on this appeal is moot. The same applies to the denial of the temporary restraining order. There is nothing to enjoin at this time. See Eckard Brandes, Inc. v. Riley, 338 F.3d 1082, 1088 (9th Cir. 2003).

However, because the appeal of the stay order has become moot due to a dismissal obtained by the County, we also vacate the district court's order lest it have collateral effect in the future. See Pilate v. Burrell (In re Burrell), 415 F.3d

^{***} The Honorable Terry Hatter, Senior United States District Judge for the Central District of California, sitting by designation.

994, 999–1000 (9th Cir. 2005); Dilley v. Gunn, 64 F.3d 1365, 1369–71 (9th Cir. 1995).

We decline to hold that the whole case has now become moot. The dismissal of the County’s action without prejudice does not preclude it from continuing to press its contract claim,¹ and does not meet the stringent mootness standards regarding the case itself.² Also, the controversy that Morgan has with the County and the Sheriff is not yet resolved.

Appeal DISMISSED; district court stay order VACATED; REMANDED for further proceedings.

¹ See, e.g., Kuperman v. Great Republic Life Ins. Co., 195 Cal. App. 3d 943, 947, 241 Cal. Rptr. 187, 189 (1987).

² See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189, 120 S. Ct. 693, 708, 145 L. Ed. 2d 610 (2000); see also Buono v. Norton, 371 F.3d 543, 546 (9th Cir. 2004).